S.B.CIVIL WRIT PETITION NO.3557/95

Mahaveer Singh vs. State of Raj. & Others.

DATE OF ORDER : 29/1/2007

HON'BLE SHRI RAJESH BALIA, J.

Mr.J.L.Purohit, for the petitioner.
Mr.Sudhir Sharma, for the respondents.

This writ petition is directed against the order of Board of Revenue dated 27/6/2005.

The chequered history of the case commences with resumption of Jagir Sattasar in erstwhile Bikaner State under the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 (hereinafter referred to as the `Act'). Jagir Sattasar stood resumed on 15.8.1954 and the records of the Jagir were also handed over to the Revenue authorities of the State of Rajasthan through Tehsildar on 27.9.1955.

Along with surrender of records, the erstwhile Jagirdar Rao Baldev Singh also submitted a list of personal properties which included 5490 bighas of the agricultural land situated in villages Meergarh, Raola and Anandgarh in Ganganagar and Bikaner District, as was then existing. He also moved an application on 13/3/1957 to correct the land records under the Rajasthan Land Revenue Act for entering the aforesaid

agricultural land as his khudkast land. The application for correction of land record was granted by the Divisional Commissioner vide his order dated 30/11/1958.

The Tehsildar, who was officer deputed to take charge of the Jagir, did not follow the procedure prescribed under Section 22 of the Act in respect of list of personal properties submitted by the erstwhile Jagirdar. Section 22 of the Act envisages that where officer taking over charge of the Jagir is of the opinion that any item of the property included in the list submitted under Section 23 of the Act is not the property, which the Jagirdar is entitled to hold as personal property under Section 23, he was required to record reasons for his opinion and refer the matter to the Jagir Commissioner under Sub-section (2) of Section 23 and simultaneously he is required to forward copy of such reference to the Government as well as to the Collector of the District in which the property in dispute is situated. In any other case, he was required to affix the list on the notice board of the Tehsil concerned the Municipal Board or village Panchayat concerned for inviting objections, if any, to the inclusion of any property or part thereof mentioned in the list submitted by the erstwhile Jagirdar to be retained as his personal property. The decision was ultimately to be made by the Jagir Commissioner on an inquiry to be held by him.

In the instant case, the Tehsildar recommended the acceptance of the list of personal properties to the Sub-Divisional Officer and recommendations of the Tehsildar were endorsed with approval by the SDO & Collector and also by the Divisional Commissioner on 30/11/1958 as private properties of the erstwhile Jagirdar. No appeal or revision was preferred against the order of the Divisional Commissioner passed on 30/11/1958.

Thereafter, the Director, Colonisation approached the Divisional Commissioner for recalling the order dated 30.11.1958, which was declined by the Divisional Commissioner on 5/3/1959. Against the order dated 5.3.1959 of Divisional Commissioner, an appeal was preferred before the Board of Revenue, who allowed the appeal and directed the Divisional Commissioner to refer the matter to the Jagir Commissioner.

In pursuance of the aforesaid directions, on a reference being made to him, by order dated 5/10/1959, the Jagir Commissioner declared the properties included in the list as personal properties of the Jagirdar.

Against the order of Jagir Commissioner, State Government preferred an appeal which was allowed by the Board of Revenue vide its

order dated 8/4/1960 and the matter was sent back to Jagir Commissioner for passing fresh order in accordance with law. Review application against the order of the Board of Revenue was dismissed on 16/7/1962.

Aggrieved with the aforesaid order of remand, Rao Baldev Singh preferred writ petition before the High Court, which was allowed on 7/10/1963, but the order of High Court was set aside on further appeal before the Supreme Court vide order dated 14/12/1967 upholding the order of remand made by the Board of Revenue.

After receipt of papers in pursuance of the aforesaid directives, the Jagir Commissioner again held in favour of erstwhile Jagirdar about personal properties on 26/10/1968.

Before the Supreme Court had decided the appeal, the Tehsildar had issued notices on 7/5/1965 and 24/6/1965 in relation to private properties situated in village Sattasar and Kakrala. These notices were made subject matter of writ petition, which was allowed by order dated 13/1/1970. In appeal, the Division Bench vide order dated 22/12/1981 sustained the order of learned Single Judge in respect of land situated in village Sattasar but reversed the judgment of learned Single Judge in relation to land situated in village Kakrala.

It may be noticed that earlier proceedings, to which we have alluded to, related to villages Meergarh, Raola and Anandgarh and were not concerned with the land situated at village Sattasar and Kakrala. The order dated 22/12/1981 became final to the extent it accepted the claim of erstwhile Jagirdar on the land situated at village Sattasar and it was not open to review or revision by any Court subordinate thereto.

It appears that subsequent thereto, in the proceedings that have gone before the Board of Revenue this distinction has not been kept in view, as we shall presently see.

As we have noticed, the order of Board of Revenue dated 8/4/1960 was sustained by the Supreme Court remanding the matter back to the Jagir Commissioner for fresh decision after holding inquiry vide its order dated 14/12/1967. Thereafter, the Jagir Commissioner passed fresh order dt: 21/5/1985 again allowing the claim of Rao Baldev Singh regarding his personal properties, as per his list. It is against that order an appeal was preferred by the Government before the Board of Revenue and the Board of Revenue vide its order dated 27/6/1995, subject matter of this writ petition, has set aside the order of Jagir Commissioner.

The substratum of the order of Board of Revenue is that since the land in question has been recorded as `khudkabij', which is not equivalent to `khudkast' and the claimant has not placed documentary evidence in support of his claim that the land is khudkast land, the oral evidence produced about personal cultivation of the land in question by the holder himself or through his agent can have no evidentiary value and cannot be relied on. With this assumption, the Board of Revenue has discarded the oral evidence led by the claimant before the Jagir Commissioner, who had thrice over came to the same conclusion that land in question is a khudkast land under personal cultivation of the erstwhile Jagirdar by himself or through his agents.

We are of the opinion that the basic assumption of the Board of Revenue that oral evidence has to be discarded in absence of documentary proof in the case like the present one is not well founded. The definition of `khudkast' given in the Act of 1952 itself postulates the possibility of the land, which may have been recorded as `Sir' or `Hawala' in settlement records. The definition of `khudkasht' reads as under:-

> "(i) `Khudkasht' means any land cultivated personally by a Jagirdar and includes-
> (i) any land recorded as khudkasht, Sir, or

Hawala in settlement records, and

(ii) any land allotted to a Jagirdar as Khudkasht under Chapter IV."

Apparently, the land recorded as khudkasht falls within the inclusive definition but the primary definition remains that `khudkasht' means land cultivated personally by a Jagirdar.

As a matter of fact, the view which is the foundation of consideration by the Board of Revenue excludes the expression `includes' used in the definition and the assumption that the primary condition of land to be considered as khudkasht that it must be recorded as khudkasht in the land record and if it has not been recorded as khudkasht, the oral evidence cannot be led about the personal cultivation. This assumption, in our opinion, has seriously affected the ultimate conclusion reached by the Board of Revenue in not considering the oral testimony on the basis of which Jagir Commissioner has thrice over recorded the same finding. The Board of Revenue has also in that context inexplicably indulged in etymological exercise of expression "khudkasht" and "khudkabij". This is also by ignoring the fact that before assumption of Jagir, the holder of Jagir was presumed to be in possession of all lands situated in Jagir. Therefore, the question that Jagirdar was in possession of the land until it was resumed is reflected in the entry. It also reflects that nobody else was in possession of that

land. Whether the land was in actual cultivation of the Jagirdar, in these circumstances, could admit of oral evidence and if credible could well provide foundation for a finding & it could not be discarded merely because documentary evidence is absent. Rather, it is apparent that there is no documentary evidence against the claim made by the petitioner from which it could be said that land was not khudkasht, to raise such presumption. It is perhaps because of the obsession with the idea drawn from Section 71 of the Evidence Act, which had no application to the facts of the case, the Board of Revenue was looking in vain for some documentary evidence, which was simply not there. The Board of Revenue has also observed that not a single witness was produced, who was cultivating land on behalf of erstwhile Jagirdar. The Jagir Commissioner in his order referred to statements of such witnesses who have been cultivating the land on behalf of Jagirdar. Therefore, the finding recorded by the Board of Revenue, in my opinion, stands vitiated by ignoring relevant material and erroneous view of law and the order cannot be sustained.

Another aspect which needs to be examined before final verdict can be passed in favour of the petitioner at this juncture is Chapter IIIB of the Rajasthan Tenancy Act, which became operative w.e.f. 1.4.1966 placing ceiling limit on the agricultural holding, which is now referred as Old Ceiling Law as subsequently Rajasthan Imposition of

Ceiling on Agricultural Holdings Act, 1973 came into force to regulate the ceiling on agricultural holding. Therefore, if any final order is required to be passed in favour of the petitioner that has to be subject to the ceiling limit permissible in the case of holder and which has to be examined at the threshold.

Before parting with the decision, it may also be noticed that it is an admitted position that entire record was surrendered to the officer-in-charge taking charge of the Jagir and record was required to be produced before Jagir Commissioner. Truncated record was produced before the Jagir Commissioner and that too having interpolation. It was not in dispute that record was throughout in the possession of the revenue authorities since 1955. Therefore, without holding an inquiry into veracity of the record which has come forward and without finding as to who is responsible for interpolating the record, undue importance cannot be given to such embellished record. The Board of Revenue was also not justified in observing that there is no evidence of payment of land revenue prior to determination of compensation in respect of land in question. Suffice it to say that land being in possession of Jagirdar, about which there was no dispute and Jagirdar himself was the holder of the land under the grant, the question of paying rent by Jagirdar to himself would not arise. Therefore, evidence of paying land revenue prior to resumption of Jagir would not have arisen and the land would

have become subject to land revenue only thereafter. After resumption, Jagirdar has allowed land revenue in respect of land in question to be deducted from his compensation, therefore, the emphasis of lack of evidence about payment of land revenue prior to date of Jagir resumption had no relevance so far as land in question is concerned.

In view of the aforesaid, this writ petition is allowed. The order of Board of Revenue dated 27/6/1995 is quashed and the matter is sent back to the Board of Revenue for deciding afresh the appeal in light of the observations made above and decide the issues on its merits.

(RAJESH BALIA), J.

Pankaj Baweja.